

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal Action No. 4:18-CR-00232
	§	Judge Mazzant
JOHN PURSER	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant John Purser’s Motion for Suppression of Evidence (Dkt. #27). Having reviewed the motion and the relevant pleadings, the Court finds the motion should be denied.

BACKGROUND

I. Officer Schlosser Encounters Defendant

On September 29, 2018, Officer Gerald Schlosser of the Princeton Police Department responded to 301 Eastham Lane, Collin County, Texas after receiving reports of a fight in progress (Dkt. #47-1 at p. 19). The area around 301 Eastham Lane is a large business park containing many structures with different addresses (Dkt. #47-1 at pp. 1–11, 13–15; Dkt. #56-1). Arriving at the business park, witnesses told Officer Schlosser that the fight was ongoing behind a business called “Purser’s Car Care.” (Dkt. #47-1 at p. 19). Heading to the fight, Officer Schlosser observed a male walking toward him and Defendant running from him (Dkt. #47-1 at p. 19). Officer Schlosser secured the male and pursued Defendant to a structure behind Purser’s Car Care (Dkt. #47-1 at p. 19). Approaching the structure, Officer Schlosser observed Defendant hold a long gun out of a window of the structure and state, “I’ll shoot your ass.” (Dkt. #47-1 at p. 19). Witnesses on the scene identified the structure as Defendant’s home (Dkt. #47-1 at p. 19). Officer

Schlosser and other law-enforcement personnel attempted to persuade Defendant to exit his home, but negotiations failed (Dkt. #47-1 at p. 20).

II. Officer Herron Obtains a Search Warrant

After Officer Schlosser's encounter with Defendant, Officer Candice Herron of the Collin County Sheriff's Office completed a probable cause affidavit to apply for a search warrant for Defendant's home (Dkt. #47-1).¹ In her affidavit, Officer Herron requested to search "275 Eastham Lane, Princeton, Collin County, Texas 75407." (Dkt. #47-1 at p. 18). Officer Herron attached two "Street View" pictures from Google Maps that she believed depicted Defendant's residence at 275 Eastham Lane (Dkt. #47-1 at p. 18).² Officer Herron described the structure in the pictures as "[a] single story structure with the front door facing west. There is a utility pole to the south with the numbers 275. The structure over all is tan with brown trim." (Dkt. #47-1 at p. 18). Officer Herron then testified to the facts above concerning Officer Schlosser's encounter with Defendant (Dkt. #47-1 at pp. 19–20). Based on Officer Herron's probable cause affidavit, Judge Smith of the 380th Judicial District Court of Texas issued a search warrant authorizing officers to search "275 Eastham Lane, Princeton, TX 75407" for "Any and all weapons, including but not limited [to] a long gun, that could have been used in the commission of an offense, namely Aggravated Assault Against a Public Servant." (Dkt. #47-1 at pp. 16–17). Unlike Officer Herron's probable cause affidavit, the warrant did not provide a description or picture of any structure located at 275 Eastham Lane (Dkt. #47-1 at pp. 16–17).

1. Officer Herron based her testimony on her review of an incident report detailing Officer Schlosser's encounter with Defendant (Dkt. #47-1 at p. 19).

2. Google Maps is a website and phone application that provides maps and directions. Google Maps can also display "Street View" photos of certain addresses.

III. Special Agent Gresham Arrests Defendant

Relying on a separate arrest warrant for Defendant, Special Agent Brent Gresham of the Bureau of Alcohol, Tobacco, Firearms, and Explosives and his partner drove to an area around Purser's Car Wash. Spotting Defendant, Special Agent Gresham and his partner chased Defendant into his residence. A struggle ensued as Special Agent Gresham and his partner attempted to push open a door to Defendant's residence while Defendant tried to bar the door. During the struggle, Defendant yelled at the special agents, "I'm going to get my shotgun. I'm going to shoot you." Eventually, Special Agent Gresham and his partner managed to enter Defendant's residence and arrest Defendant. Special Agent Gresham and his partner also found two individuals hiding in Defendant's residence. These individuals eventually told officers that Defendant kept a long gun hidden in the ceiling of his residence.

IV. Deputy Sheriff Jumper Executes the Search Warrant

After Defendant's arrest, Deputy Sheriff A.J. Jumper of the Collin County Sheriff's Office and other officers arrived at the business park located around Defendant's residence.³ Deputy Sheriff Jumper possessed a copy of the search warrant for Defendant's residence, but not a copy of Officer Herron's probable cause affidavit. Therefore, Deputy Sheriff Jumper did not see the Street View photos of Defendant's residence or read Officer Herron's description of the photos. Deputy Sheriff Jumper testified that the layout of the business park made it difficult to locate 275 Eastham Lane due to the many structures and tall, metal fences in the area. Deputy Sheriff Jumper attested that in his search for 275 Eastham Lane, he went through a tire shop—with permission of the property owner—to enter a fenced-in area. Inside the fenced-in area, Deputy Sheriff Jumper

3. Officer Herron arrived after the search of Defendant's residence began. Upon arrival, Officer Herron learned of Defendant's encounter with Special Agent Gresham.

found a utility pole with a utility box labeled with the number “275.” (Dkt. #56-6 at p. 11).⁴ There was no structure next to the utility pole as depicted in the Street View photos. Deputy Sheriff Jumper next took a left and traveled a short distance through a small open area. Near some construction equipment and through a chain-link fence, Deputy Sheriff Jumper spotted a structure (Dkt. #56-7 at p. 1). Although the structure did not look like the structure pictured in the Street View photos from the probable cause affidavit, the structure did have the number “275” on its side. (Dkt. #56-7 at p. 6). This structure was Defendant’s residence.

Deputy Sheriff Jumper began searching Defendant’s residence. During the search, Officer Herron passed on the information concerning the location of the long gun—learned from the witnesses found during Defendant’s arrest—to Deputy Sheriff Jumper. Deputy Sheriff Jumper then located the long gun specified in the Indictment and ammunition in the ceiling of Defendant’s residence where the witnesses stated it would be.

V. A Grand Jury Indicts Defendant and the Court Dismisses Count Two of the Indictment

A Grand Jury indicted Defendant on December 12, 2018, on three counts: (1) a violation of 18 U.S.C. § 922(g)(1) (Felon in Possession of a Firearm); (2) a violation of 26 U.S.C. § 5861(d) (Possession of a Firearm not Registered in the National Firearms Registration and Transfer Record); and (3) a violation of 18 U.S.C. § 111 (Assaulting, resisting, or impeding certain officers or employees). On May 20, 2019, before trial began, the Court held a Final Pretrial Conference in this case. During the Final Pretrial Conference, the Government moved to dismiss Count Two of the Indictment. Without objection from Defendant, the Court dismissed Count Two of the Indictment.

4. This utility pole is the same utility pole depicted in the Street View photos.

VI. The Court Denies Defendant's Motion to Suppress

On May 15, 2019, Defendant filed his motion to suppress concerning the long gun and ammunition found during Deputy Sheriff Jumper's search (Dkt. #27). In support of his motion, Defendant argues the probable cause affidavit and search warrant are facially deficient. The Government did not file a response to Defendant's motion to suppress.

At the May 20th Final Pretrial Conference, the Court held a hearing on Defendant's motion. After hearing arguments from the parties and considering the evidence submitted, the Court orally denied Defendant's motion to suppress. The Court stated that it would enter this written order memorializing its denial of Defendant's motion at a later point. After the Final Pretrial Conference, the parties tried the case to a jury. At the end of the trial, the jury found Defendant guilty on Counts One and Three of the Indictment (Dkt. #53).

LEGAL STANDARD

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment, therefore, establishes four requirements for warrants: (1) warrants must be based on probable cause; (2) warrants must be supported by a sworn affidavit; (3) warrants must particularly describe the place to be searched; and (4) warrants must particularly describe the type of evidence sought. *Groh v. Ramirez*, 540 U.S. 551, 557 (2004). Under the first requirement, "probable cause exists if 'there is a fair probability that contraband or evidence of a crime will be found in a particular place,' considering 'all the circumstances set forth in the affidavit.'" *United States v. Huerra*, 884 F.3d 511, 517 (5th Cir. 2018) (quoting *United States v. Wylie*, 919 F.2d 969, 974 (5th Cir. 1990)). In assessing the second requirement, courts are "[m]indful that the Fourth Amendment's requirements 'are practical and not abstract,' [and] a

warrant's supporting affidavit 'must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion.'" *Id.* (quoting *United States v. May*, 819 F.2d 531, 535 (5th Cir. 1987)). Warrants satisfy the third and fourth particularity requirements if "'the description is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place [and items] intended [to be searched or seized].'" *Mitchell v. Leblanc*, CV 14-2510, 2016 WL 4474835, at *6 (E.D. La. Feb. 18, 2016), *report and recommendation adopted*, CV 14-2510, 2016 WL 4467783 (E.D. La. Aug. 24, 2016) (quoting *Steele v. United States*, 267 U.S. 498, 503 (1925)); *see also United States v. Aguirre*, 664 F.3d 606, 614 (5th Cir. 2011) ("The description in the warrant must be such that a reasonable officer would know what items he is permitted to seize."). A warrant that fails to particularly describe the place to be searched or the evidence to be seized is facially deficient and, therefore, invalid because an officer cannot, in good faith, rely on the warrant. *United States v. Leon*, 468 U.S. 897, 923 (1984).

ANALYSIS

Defendant moves to suppress the evidence of the long gun and ammunition found by Deputy Sheriff Jumper arguing that (1) Officer Herron's probable cause affidavit is "recklessly false" and (2) the warrant is facially deficient as a reasonable officer could not have relied on the warrant. After considering the arguments and evidence provided, the Court denies Defendant's motion.

I. Probable Cause Affidavit

Defendant asserts that Officer Herron's probable cause affidavit is constitutionally deficient because it contains "recklessly false" information (Dkt. #27 at p. 4). In the probable cause affidavit, Officer Herron inserted the two Street View photos of a structure she believed was Defendant's residence and then described the structure as, "A single story structure with the front

door facing west. There is a utility pole to the south with the Number 275. The Structure over all is tan with brown trim.” (Dkt. #47-1 at p. 18). At the hearing, Officer Herron testified, and the parties agreed, that the photos are outdated as the structure depicted in the photos no longer exists.

Despite the incorrect photos and description of the place to be searched, the Court does not find that Officer Herron’s affidavit contains recklessly false information. Suppression of evidence is appropriate if officers are dishonest or recklessly disregard the truth in preparing affidavits. *Leon*, 468 U.S. at 923 (citing *Franks v. Delaware*, 438 U.S. 154 (1978)). While the photos and description of Defendant’s residence in Officer Herron’s affidavit are incorrect, there is no evidence that Officer Herron recklessly disregarded the truth in preparing the affidavit. Reviewing Officer Schlosser’s incident report, Officer Herron prepared her affidavit seeking to obtain a search warrant for Defendant’s residence. In the affidavit, Officer Herron identified the address to be searched, correctly testified to the facts stated in Officer Schlosser’s incident report, and provided Judge Smith with sufficient information to make a probable cause determination. Unfortunately, Officer Herron also inserted the incorrect Street View photos and description of Defendant’s residence because she did not realize the photos were outdated. Although these facts are evidence of a mistake, they are not evidence that Officer Herron recklessly disregarded the truth in preparing her affidavit. Instead, it appears that Officer Herron used the resources available to her to provide Judge Smith with what Officer Herron believed was a factually accurate depiction of Defendant’s residence.

As evidence of Officer Herron’s reckless conduct, Defendant suggests:

A simple drive by of the place to searched described in the affidavit would have revealed the structure as described did not exist. Failing to reasonably investigate prior to writing the affidavit raises to the level of providing the neutral magistrate with “recklessly false” information.

(Dkt. #27 at pp. 4–5). However, as noted by Officer Herron and Deputy Sheriff Jumper, the area around 275 Eastham Lane is surrounded by tall, metal fences that obscure the view of Defendant’s residence from the road. Therefore, “a simple drive by” would not have revealed that the Street View photos were outdated. Accordingly, reviewing the arguments and evidence provided, the Court does not find that Officer Herron’s affidavit contains recklessly false information.

II. Search Warrant

Defendant next argues that the search warrant is facially deficient because “it should have been apparent from the photos (accompanying the affidavit) of the residence to be searched that the photos did not match the address location nor the appearance of the described residence to be searched” (Dkt. #27 at p. 5). The Court disagrees for two reasons. First, Deputy Sheriff Jumper possessed the search warrant—not the probable cause affidavit—when he executed the search of Defendant’s residence. As the search warrant did not contain the Street View photos, it would not have been evident to Deputy Sheriff Jumper that the “photos did not match” when he executed the search.

Second, the warrant is not facially deficient. The Fourth Amendment establishes four requirements for warrants: (1) warrants must be based on probable cause; (2) warrants must be supported by a sworn affidavit; (3) warrants must particularly describe the place to be searched; and (4) warrants must particularly describe the type of evidence sought. *Groh*, 540 U.S. at 557. Defendant does not challenge that the warrant is based on probable cause, and the Court found above that the warrant is supported by a constitutionally sufficient affidavit. Warrants satisfy the third and fourth particularity requirements if “the description is such that the officer with a search warrant can, with reasonable effort ascertain and identify the place [and items] intended [to be searched and seized].” *Mitchell*, 2016 WL 4474835, at *6; *see also Aguirre*, 664 F.3d at 614

(“The description in the warrant must be such that a reasonable officer would know what items he is permitted to seize.”). The search warrant for Defendant’s residence provided the address of the place to be searched—“275 Eastham Lane, Princeton, TX 75407”—and a specific description of the items to be seized—“any and all weapons, including but not limited [to] a long gun.” (Dkt. #47-1 at p. 16). This description would enable a reasonable officer to locate the place to be searched and the items to be seized. *See United States v. Dancy*, 947 F.2d 1232, 1234 (5th Cir. 1991) (“A correct street address in a search warrant, even if no other description is given, is particular enough to withstand constitutional scrutiny.”); *Groh*, 540 U.S. at 554, 557 (stating that a probable cause affidavit seeking to search for “any automatic firearms or parts to automatic weapons, destructive devices to include but not limited to grenades, grenade launchers, [and] rocket launchers” adequately described the “things to be seized.”).⁵ As the search warrant meets the four constitutional requirements, the Court finds that the search warrant is not facially deficient.

III. Searching 275 Eastham Lane

Defendant mentions in his motion, and argued at the hearing, that Deputy Sheriff Jumper did not technically search “275 Eastham Lane.” (Dkt. #27 at pp. 2–3). According to Defendant, the Collin County “GIS/Rural Addressing” records show that Deputy Sheriff Jumper technically searched 301 Eastham Lane—not 275 Eastham Lane—as no structure currently exists at 275 Eastham Lane (*See* Dkt. #47-1 at pp. 5–11). Whether or not Defendant is technically correct, Defendant’s residence is located close to the actual address of 275 Eastham Lane and Defendant’s residence has the number “275” on its outer wall. There is no evidence that any other structure in

5. In *Groh*, the probable cause affidavit adequately described the “things to be seized” but the search warrant was facially deficient as it did not contain the description found in the probable cause affidavit. 540 U.S. at 554, 557.

the business park purported to be 275 Eastham Lane. Therefore, for all practical purposes, Defendant's residence is 275 Eastham Lane.

In analogous situations, the Fifth Circuit has examined whether search warrants are facially deficient because they contain the incorrect address of the place to be searched. *United States v. Lusk*, 176 F.3d 479 (5th Cir. 1999); *United States v. Gordon*, 901 F.2d 48, 50 (5th Cir. 1990) (citing *Leon*, 468 U.S. at 899); *United States v. de Leon*, No. CRIM.A.SA05CR714-XR, 2006 WL 3740809, at *2 (W.D. Tex. Dec. 14, 2006). In these cases, the Fifth Circuit held that warrants are not facially invalid when they list incorrect addresses if: (1) officers may reasonably presume a warrant is valid; (2) there is no possibility that the officers would search the wrong structure; and (3) the officers acted in good faith when executing the warrant. *Id.* Applying this analysis here: (1) Deputy Sheriff Jumper had no reason to presume that Defendant's residence was not 275 Eastham Lane; (2) there is no possibility that Deputy Sheriff Jumper would search the wrong structure because no structure existed at 275 Eastham Lane and no other structure in the business park purported to be 275 Eastham Lane; and (3) the evidence indicates that Deputy Sheriff Jumper acted in good faith in executing the warrant. As a result, the Court does not find that the search warrant is facially invalid or that Deputy Sheriff Jumper's search of Defendant's residence was unconstitutional, despite the technical location of 275 Eastham Lane in the GIS/Rural Addressing records.

CONCLUSION

It is therefore **ORDERED** that Defendant's Motion for Suppression of Evidence (Dkt. #27) is hereby **DENIED** because the Court finds that Officer Herron's affidavit does not contain recklessly false information and the search warrant issued for Defendant's residence is not facially deficient.

IT IS SO ORDERED.

SIGNED this 16th day of July, 2019.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE